

DEPARTMENT OF THE ARMY PERMIT

Permittee: Sunrise Coal, LLC

Permit Number: LRL-2012-852-sew

Issuing Office: U.S. Army Engineer District, Louisville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: This permit authorizes the discharges of fill and/or dredged material into "waters of the United States (U.S.)" throughout the 591.1-acre Ace in the Hole Mine, approved under Surface Mining Control and Reclamation Act (SMCRA) – Indiana Department of Natural Resources (IDNR) Permit Numbers S-00370. The permittee is authorized to impact a total of 16,647 linear feet of streams. Of this, 13,505 linear feet are intermittent streams and 3,142 linear feet are ephemeral streams. Additionally, the permittee would impact 4.03 acres of palustrine forested (PFO) wetlands and 5.1 acres of open water. All economically recoverable coal would be removed during the excavation of the area, processed and sold. The area would be returned to approximate original contours, covered with stockpiled soil material, revegetated, and returned to an approved post-mine land use through the SMCRA process.

The permittee shall conduct on-site stream mitigation within the proposed mining area. To mitigate the impacts to streams the permittee shall re-establish ephemeral streams at a ratio of 1.36:1 (4279 linear feet) and reconstruct intermittent streams at a ratio of 1.06:1 (14,384 linear feet). The streams would employ a natural pattern, profile and dimension and would have forested riparian corridors adjacent to a majority of the reconstructed channels. Mitigated streams would be of Rosgen B, C, and E type dependent on stream and valley slope. Minimum Rapid Bioassessment Protocol (RBP) scores would be equal to or greater than the existing streams proposed for impact.

Wetlands shall be re-established at a 3:1 ratio for a total of 12.09 acres of re-established PFO wetlands. The wetlands shall be managed for hard mast species and constructed to receive hydrology from overbank flows of adjacent streams as well as precipitation. These wetlands would provide greater functions than the existing wetlands proposed for impact due to greater diversity of species and managing specifically for hard mast producing trees which provide more food for mammals and avian species than other types of trees.

Impacts to 5.1 acres of open water shall be mitigated at a 1.6:1 ratio (8.2 acres) and would consist of 3 jurisdictional ponds left within the reclaimed area adjacent to and discharging into jurisdictional streams.

Project Location: Unnamed tributaries to Campground Branch and White Oak Creek as well as associated wetlands and open waters located immediately east of Clay City, Clay County, Indiana.

LATITUDE & LONGITUDE: Latitude: 39.280278° North
 Longitude: 87.091667° West
 7.5 Minute Quad: Clay City, Indiana

Permit Conditions:**General Conditions:**

1. The time limit for completing the authorized activity ends on December 31, 2018. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall adhere to the stream and wetland mitigation plans as described and attached in, "USACE CWA 404 Authorization Application, Ace in the Hole, IDNR Permit # S-00370" dated September 19, 2012. Any modification to the mitigation plan or proposed mitigation locations will be required to be submitted to this office for prior approval. Within 6 months after completion of the mitigation construction, as-built plans documenting the patterns, profile and dimensions of the streams and wetlands shall be submitted to this office for review and approval.
2. All of the mitigation shall be protected in perpetuity by having the respective property owner(s) on whose property the mitigation property is located execute a completed DECLARATION OF RESTRICTIVE COVENANTS, which shall be in the same form and contain the same terms as the DECLARATION OF RESTRICTIVE COVENANTS contained in the application/mitigation plan. Within 60 days of mitigation construction completion per tract, a final draft of the DECLARATION OF RESTRICTIVE COVENANTS and its' exhibits must be provided to and approved by the Corps of Engineers, Louisville District. The permittee shall ensure that the approved DECLARATION OF RESTRICTIVE COVENANTS is recorded with the property deed on all onsite mitigation sites, within 60 days of Corps approval.

In the event the permittee fails to provide a DECLARATION OF RESTRICTIVE COVENANTS that assures long term protection of the mitigation property or fails to ensure that the approved DECLARATION OF RESTRICTIVE COVENANTS is properly executed and recorded, the permittee shall provide alternative mitigation acceptable to this office within ninety (90) days of notice of such failure from this office.

3. The permittee's responsibility to complete the required compensatory mitigation proposal as referenced in Special Conditions 1 and 2 shall not be considered fulfilled until mitigation success has been demonstrated, approved by this office, and written verification is received from the U. S. Army Corps of Engineers.
4. To meet the requirements of the Endangered Species Act and to avoid harm to the Federally listed Indiana bat, the permittee is restricted from completing any tree clearing activities from April 1 – September 30.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective

measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

LUKE T. LEONARD
Colonel, Corps of Engineers
Commanding

(DATE)

BY: Sam Werner
Project Manager
Regulatory Branch

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)